

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3110 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VRAJLAL RAGHURAM JOSHI

Versus

DEPUTY ENGINEER

Appearance:

MR DG SHUKLA for Petitioner

MR CC BHALJA for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/11/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The facts which are not in dispute are as under:

The petitioner entered in the employment of the respondent No.1 on 1-5-1972 as Clerk. His services came to be terminated on 15-7-1976. The petitioner raised an industrial dispute and the same has been referred to the

Labour Court at Rajkot which was registered as Reference (L.C.R) No.256/78. In those proceedings, a settlement came to be arrived at between the parties and on the basis of the settlement, the Labour Court has passed the award in terms thereof. As per condition No.5 of the settlement, the petitioner should be treated as having worked in the capacity of Clerk with continuity of service and all other legal rights but not for back wages. So as per the said condition, the respondent No.1 was duty bound to pay to the petitioner, wages, D.A., A.D.A, medical allowance, house rent allowance, L.T.C. benefit and other facilities of leave etc. in the way in which the said benefits are admissible and payable to other employees of the respondent No.1. The petitioner was reinstated in pursuance of the award. Thereafter he made a claim for other benefits to be given to him but it was not given and hence he filed recovery application No.537/81 before the Labour Court at Rajkot under section 33-C(2) of the Industrial Disputes Act, 1947. The Labour Court at Rajkot passed an order on 19th January, 1984 determining the total amount due and payable to the petitioner by the respondent No.1 to the tune of Rs.23087-92 and Rs.150/by way of costs.

3. The petitioner filed another application being recovery application No.187/84 before the Labour Court at Rajkot requesting the issuance of certificate directing the respondent No.3 to recover the amount in question from the first respondent by way of land revenue. After hearing the parties, the Labour Court, Rajkot ordered for issuance of the certificate for the recovery of the said amount in favour of the petitioner. That certificate was sent to the Collector, Rajkot but the amount has not been recovered by the said authority as land revenue. Hence, this special civil application before this Court.

4. The petitioner prayed for the direction to the respondent No.3 to recover the amount due under the certificate dated 7th August, 1984. In the prayer clause, the date has been shown as 17th August, 1984. Further prayer has been made for direction to the second respondent to take necessary actions against the first respondent pursuant to the petitioner's complaint under the provisions of the I.D. Act, 1947 for committing the breach of condition No.5 of the award dated 5-10-1979.

5. Reply to the special civil application has not been filed by either of the respondents.

6. It is really a sorry state of affairs that though the award has been passed in favour of the petitioner in

the year 1979 but full benefits of the same have not been given to the petitioner till date. The petitioner has to file an application for computation of the benefits which follow from the award and the benefits have been computed and a certificate has also been issued for the recovery of the same as land revenue but the Collector has shown silent approach to that certificate. Merely because the recovery has to be made from the Government department it is not justified on the part of the Collector to sit over the matter. He has to discharge his statutory duties and once a certificate has been sent to him, the amount has to be recovered. This act of the Collector, Rajkot to sit over the matter i.e. certificate of recovery deserves to be deprecated.

7. The learned counsel for the respondents is unable to show any ground whatsoever not to pay the petitioner the amount which has been computed in his favour under section 33-C(2) of the I.D. Act, 1947. The learned counsel for the respondents admit that the orders which have been passed in favour of the petitioner under section 33-C(2) of the I.D. Act, 1947 as well as the certificate which has been issued under the said Act, have not been challenged by the respondents before this Court or any other appropriate forum. So those orders attained the finality and the respondent No.1 was under a legal obligation to make the payment thereof.

8. Non-compliance of the award is an offence but the prosecution can only be lodged when the sanction has been granted for the same by the Government. The petitioner has taken the steps for prosecution of respondent No.1 also but his application under section 29 of the I.D. Act 1947 has not been decided. Application under section 29 of the I.D. Act, 1947 has to be dealt with by the Government and in a case where the prosecution has to be ordered for the Government officer it is not expected of the Government to sit over the matter. So the respondents No.1 and 3 have acted highly arbitrarily. The award has been made and the respondent No.1 was under a legal obligation to make the payment of the computed amount. Be that as it may, the worse part is that though this petition has been filed in the year 1985 but till date the amount as computed by the Labour Court under section 33-C(2) of the I.D. Act, 1947 and the certificate for the recovery of which has also been issued has not been paid.

9. The counsel for the petitioner placed on the record an order passed by this Court in special civil application No.3902/86 on 26th August, 1996 and he

submitted that the amount which was ordered to be paid under that order is other than the amount in respect of which the certificate has been issued in the present case. It is made clear that in case the amount which has been directed to be paid to the petitioner by this Court under the order dated 26th August, 1996 is inclusive of this amount, which is claimed in the present case then the respondent No.1 is not required to make the payment of the said amount to the petitioner. So before complying with this order of this Court in this case it has to ascertain all these facts.

10. In the result, this special civil application is allowed and it is hereby ordered that the respondent No.1 shall pay to the petitioner an amount of Rs.23237-92ps for the recovery of which a certificate has been issued on 7-8-1984, within a period of three months from the date of receipt of writ of this order together with the interest thereon at the rate of 15% per annum from 7-8-1984. It is a case where the petitioner has unnecessarily been harassed by the respondent No.1 and as such it is a fit case where the petitioner should also be awarded the costs of litigation. The counsel for the petitioner fairly conceded that Rs.2500/- is the total amount which has been incurred by the petitioner in these proceedings. The respondent No.1 is directed to pay Rs.2500/- by way of costs of this petition to the petitioner also. The amount of certificate as well as the interest calculated thereon at the rate aforesaid together with the amount of costs should be paid to the petitioner by demand draft. Rule made absolute in the aforesaid terms with no order as to costs.

zgs/-